

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 928

INTRODUCER: Senator Altman

SUBJECT: Property Assessments

DATE: January 16, 2012

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Toman | Yeatman | CA | Pre-meeting |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill amends the first of eight factors property appraisers are required to take into account in arriving at just value. The bill specifies that the present cash value of the property would now include, but not be limited to, a distress sale, short sale, bank sale, or sale at public auction. The property appraiser shall exercise discretion in using all open market transactions and shall use such transactions only if the transactions, in the opinion of the property appraiser, constitute a sufficient number as to affect market value within any specific geographical area. The act would apply retroactively to January 1, 2012.

This bill substantially amends section 193.011 of the Florida Statutes.

II. Present Situation:

Property Valuation in Florida

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹

¹ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.²
- Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.³
- Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁴
- Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 years of age or older.⁵
- The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁶
- Certain working waterfront property is assessed based upon the property's current use.⁷

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁸

Factors Considered in Deriving Just Valuation

Section 193.011, F.S., implements the just valuation requirement of the Constitution. It requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any executive order, ordinance, regulation, resolution or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;
- Location of the property;
- Quantity or size of the property;

² Fla. Const. art. VII, s. 4(a).

³ Fla. Const. art. VII, s. 4(c).

⁴ Fla. Const. art. VII, s. 4(e).

⁵ Fla. Const. art. VII, s. 4(f).

⁶ Fla. Const. art. VII, s. 4(i).

⁷ Fla. Const. art. VII, s. 4(j).

⁸ Fla. Const. art. VII, ss. 3 and 6.

- Cost of the property and the present replacement value of any improvements thereon;
- Condition of the property;
- Income from the property; and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.

The Florida Supreme Court has held that “the appraisal of real estate is an art, not a science,”⁹ and “the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty.”¹⁰ In *Lanier v. Walt Disney World Company*, the court held that property appraisers are not obliged, under the law, to give each factor equal weight, provided each factor is first carefully considered and such weight is given to a factor as the facts justify.¹¹

Florida Real Property Guidelines

The functions of property appraisers and the Department of Revenue in Florida are distinct and separate. Sections 195.062(1), 195.002(1), and 195.032, F.S., contain a requirement for the Department of Revenue to develop and promulgate real property appraisal guidelines to aid and assist Florida Property Appraisers in the performance of their valuation responsibilities. These are known as The Florida Real Property Appraisal Guidelines.¹² The guidelines cover issues ranging from the foundations of mass appraisal to land valuation and land valuation methods.

Section 195.062(1), F. S., states that these real property appraisal guidelines shall not have the force or effect of administrative rules. Therefore, these guidelines are not rules as defined by the Florida Administrative Code. Other than the applicable provisions of Florida law, manual of instructions, and regulatory requirements, the use of the guidelines is left to the discretion of property appraisers.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board (VAB) shall be created for each county. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to s. 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.¹³

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser’s assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Following the hearing decision by the VAB, the property appraiser submits a

⁹ *Powell v. Kelley*, 223 So. 2d 305, 309 (Fla. 1969).

¹⁰ *District School Board of Lee County v. Askew*, 278 So. 2d 272, 276 (Fla. 1973).

¹¹ *Lanier v. Walt Disney World Company*, 316 So. 2d 59, 62 (Fla. 4 DCA 1975); *certiorari denied* 330 So. 2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876).

¹² Florida Department of Revenue Property Tax Administration, *The Florida Real Property Appraisal Guidelines* adopted Nov. 26, 2002.

¹³ Section 194.032(1)(a)1.-4., F.S.

revised certified tax roll to each taxing authority. If the taxpayer does not agree with the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 193.011(1), F.S., the first of eight factors property appraisers are required to take into account in arriving at just value. The bill specifies that the present cash value of the property, which is the amount a willing purchaser would pay a willing seller at arm's length, would include but not be limited to a distress sale, short sale, bank sale, or sale at public auction. The property appraiser shall exercise discretion in using all open market transactions and shall use such transactions only if the transactions, in the opinion of the property appraiser, constitute a sufficient number as to affect market value within any specific geographical area.

Section 2 provides that the act shall take effect upon becoming a law and shall apply retroactively to January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons owning or purchasing property in Florida may have their just valuations altered as a result of the bill.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) has reviewed HB 251 which is substantially the same as the bill.¹⁴ As part of their analysis, the REC used Department of Revenue qualification codes to identify applicable sales that had been previously disqualified. The codes used were:

- 12 - Deeds to or from financial institutions. Deeds stating “in lieu of Foreclosure.”
- 37 - Sale not exposed to the open market, sale involving atypical participant motivation.
- 38 - Forced sale or sale under duress. Sale to prevent foreclosure.

The REC inquired of property appraisers about how they thought the bill language would impact current practices. The REC received responses from appraisers whose tax rolls comprise 61 percent of the taxable value of the state. Answers regarding the potential impact varied, depending on the predominance of distressed sales in a given county.

Certain counties indicated that they were using these types of sales after applying certain standards in areas of their county where there were a predominance of distressed sales.¹⁵ Other counties indicated there were sufficient arms length sales that did not have elements of distress and as such felt this change would result in reductions to their values of 3 percent to 15 percent. Those counties that the REC had conversations with all felt there would be an impact both at the VAB and in the future when distressed sales return to a normal percentage of transactions.

The conference adopted negative indeterminate impacts of at least the following amounts, assuming current statewide millage rates:¹⁶

- For non-school levies, the minimum impacts are -\$14.3 million cash/-\$29.0 million annualized for FY 2012-13, and -\$29.0 million for fiscal years 2013-14 through 2015-16.
- For school levies the minimum impacts are -\$10.2 million cash/-\$20.8 million annualized for FY 2012-13, and -\$20.8 million for fiscal years 2013-14 through 2015-16.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOR, the bill language creates an internal conflict in s. 193.011, F.S., by including distress-type transfers as a component of open market, arm's length sales involving a

¹⁴ Office of Economic and Demographic Research, The Florida Legislature, *Property Assessments – Distressed Sales, HB 251* (Oct. 24, 2011, Nov. 28, 2011) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page90-95.pdf> (last visited January 18, 2012).

¹⁵ Counties indicating they were already accounting for distressed sales included Broward, Collier, Hillsborough, Lee, Orange, and Volusia.

¹⁶ Statewide millage rates of 10.9 for non-school purposes, and 7.8 for school purposes.

willing seller.¹⁷ By definition, such distress-type transfers are not open market or arm's length sales involving a willing seller (market sales).

The DOR also posits that the bill language would change the meaning of market sales as provided in subsections 193.011(1) and 195.096(2)(c), F.S., leading to increased assessment variation and decreased assessment uniformity. This would create a different standard for "market sales" and would present substantial difficulty for the Department in performing its oversight duties under sections 193.1142, 195.0012, 195.096, 195.0995, and 195.097, F.S.

Subsection 195.096(2)(d), F.S., states: "In the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere." Section 195.0012, F.S., states the following: "It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district." According to the DOR, using distress-type transfers as "market sales" would increase assessment variation and impede the legislative intent for the Department to secure just valuations and assessment uniformity.

Section 195.096(5), F.S., states the following: "It is the legislative intent that the department utilize to the fullest extent practicable objective measures of market value in the conduct of reviews pursuant to this section." The DOR postulates that the distress-type sales contemplated in this bill would not give objective measures of value as provided by statute. The Department's sale qualification reviews under s. 195.0995, F.S., rely upon arm's length, market sales as objective measures of whether particular sales should be qualified or disqualified consistent with the statutory scheme for just valuation. According to the Department, including non-market, distress-type sales in the pool of market sales would impede the DOR's ability to objectively and reliably evaluate the decisions of the property appraiser in qualifying or disqualifying sales. This would lead to difficulty in the Department's ability to perform its duties under s. 195.097, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ Florida Department of Revenue, *Senate Bill 928 Analysis* (Nov. 29, 2012) (on file with the Senate Committee on Community Affairs). The entirety of the Related Issues section represents analysis by the DOR.